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Supreme Court, U. S.

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NO. 95-1771

**IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995**

THOMAS PIERCE

Petitioner

-vs-

STATE OF OHIO

Respondent

**ON PETITION FOR WRIT OF CERTIORARI
TO THE EIGHTH DISTRICT COURT OF APPEALS
FOR CUYAHOGA COUNTY, OHIO**

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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COUNTER QUESTIONS OF LAW

Respondent submits that the questions presented by the record are more properly stated as follows:

- I. WHETHER THE TRIAL COURT ERRED WHEN IT SOUGHT TO IMPOSE AN ADDITIONAL DUTY UPON THE POLICE AS AN ALTERNATIVE TO AN IMPOUND SEARCH RATHER THAN DETERMINING WHETHER THE POLICE HAD PROBABLE CAUSE TO SEIZE AND CONDUCT AN INVENTORY SEARCH OF THE VEHICLE.
- II. WHETHER AN APPELLATE COURT HAS THE AUTHORITY TO REJECT ERRONEOUS TRIAL COURT'S FINDINGS WHICH ARE CONTRARY TO LAW SINCE THE TRIAL COURT SOUGHT TO CREATE ALTERNATIVES TO AN INVENTORY SEARCH OF AN IMPOUNDED VEHICLE. SEE, COLORADO V. BERTINE (1987), 479 U.S. 367.

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OBJECTIONS TO JURISDICTION

There are no substantial federal questions involved which could require this Court to review this case.

The Ohio courts decided this case in accordance with the Constitution of the United States, the Ohio Constitution and the applicable decisions of this Court.

No substantial federal question is presented by the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

The Court of Appeals, Eighth Judicial District, reversed the trial court's granting of petitioner's Motion to Suppress Evidence.

Likewise, the Ohio Supreme Court declined jurisdiction, finding no substantial constitutional question presented for review.

STATEMENT OF THE FACTS

On November 2, 1993, petitioner, Thomas Pierce, and two companions, Napoleon Durden and Nathaniel Flowers, were indicted by the Cuyahoga County Grand Jury in a six count indictment for Receiving Stolen Property, in violation of R.C. §2913.51; Carrying a Concealed Weapon, in violation of R.C. §2923.12; Possession of a Controlled Substance, to-wit: cocaine, in violation of R.C. §2925.03; Preparation of a Controlled Substance for Shipment, in violation of R.C. §2925.03; Use of a Motor Vehicle for the Commission of a Felony Drug Abuse, in violation of R.C. §2925.13; and Possession of Criminal Tools, in violation of R.C. §2923.24.

On November 24, 1993, petitioner and Nathaniel Flowers were arraigned whereupon each entered a plea of not guilty to the indictment. On December 8, 1993, Napoleon Durden was arraigned whereupon he also entered a plea of not guilty to the indictment.

Petitioner filed a Motion to Suppress illegally obtained evidence. On January 7, 1994, the trial court held a hearing on petitioner's Motions to Suppress.

During the hearing, the following facts were developed. On September 1, 1993, the Street Crimes Unit of the Cleveland Police Department was investigating an illegally parked vehicle near the intersection of East 71st Street and St. Clair. The unit suspected that the parked vehicle was involved in the sale and/or transportation of illegal drugs.

The Street Crimes Unit's main responsibility is the enforcement of the drug laws of the State of Ohio. The unit is comprised of approximately 15 members who generally deploy themselves in numbers large enough to outnumber and overpower any resistance of people the unit may encounter who are suspected of drug trafficking.

On the date in question, eight members of the unit were investigating an automobile illegally parked from the curb when they observed a second automobile, a 1987 Oldsmobile Cutlass, begin driven south along East 71st Street.

Detective Walker of the Street Crimes Unit noticed that one of the passengers in the Cutlass was Nathaniel Flowers, whom he had known since childhood. Walker testified that he had received certain information linking Flowers to the sale of illegal drugs.

Based on Walker's belief, the unit left its investigation of the parked automobiles and proceeded to follow the Cutlass. Petitioner was operating the automobile, Flowers was a passenger in the front seat, and Napoleon Durden was a passenger in the rear seat.

The unit followed the Cutlass for approximately one-half mile. During this time period, the unit learned through the police computer that the license plates on the Cutlass were not registered to that vehicle (the Oldsmobile), but rather to a 1985 Chevrolet.

With this information, the unit stopped the Cutlass, ordered all of the occupants out of the car, and conducted a pat-down search on all three individuals. Detective Petrovich, another member of the unit, testified that (1) he was concerned for his safety due to the nature of the neighborhood as a high crime area, and (2) the license plate did not correspond with the vehicle in question. The trial court found that after the vehicle was stopped, the police removed petitioner's wallet containing over \$900 in cash and a pager to receive messages, which were immediately placed on the front hood of the automobile.

After the occupants had been searched, the police questioned petitioner as to the ownership of the vehicle. At this point, petitioner produced an Ohio driver's license in the name of Robert Hale. Petitioner later explained that he was a fugitive from the State of Pennsylvania and was trying to evade apprehension and extradition. Petitioner told the police that the automobile belonged to his girlfriend, Fransheria Cannon, and that there was sufficient proof of ownership for the vehicle in the glove compartment.

Upon checking the glove compartment, Detective Petrovich testified that he could not find evidence of ownership. Petrovich stated: "The only thing I did see in the glove box was paperwork from a 30 day tag, which at the time held no relevance because

there was no 30 day tag on the car."

In a further effort to establish ownership of the vehicle, the unit entered the vehicle identification number (VIN) into the police computer. The police computer had no information on file under the vehicle identification number. At this point, Detective Petrovich testified that the police proper procedure under the circumstances is as follows:

The first thing is to impound the car. You find if there is any documentation in the car. If there is nothing proving ownership or who owns this car, you have to impound the car.

Detective Walker testified at length that he too searched the vehicle for documentation to prove ownership of the vehicle. On direct, he responds as follows:

Q. What did you do when he informed you of that?

A. I asked him if I could look in the vehicle for the documentation.

Q. What did he say?

A. He complies (sic) and said I could look.

* * *

Q. At that point did you do anything in order to determine the ownership of the vehicle?

A. Yes, I did.

Q. What did you do?

A. I went to the vehicle and I searched the compartment, the driving compartment, in search of some kind of documentation that would show that the vehicle belonged to, in fact, who the defendant said it was.

Q. Where do you specifically recall searching?

A. I looked inside of the glove box.

* * *

Q. Did you find anything in the glove box that would indicate to you, ownership, or to whom the vehicle may have belonged?

A. What I found in the glove box was a receipt of some sort for a 30 day tag, and a few cassette tapes.

Q. Now when you say receipt for a 30 day tag, what do you by receipt?

A. It appeared at the time that this was it was some kind of duplication of an application or receipt for a 30 day tag for the State of Ohio.

Q. Do you recall in whose name that receipt was?

A. I do not recall.

Q. Was it significant to you, the document, in terms of

establishing ownership or registration of that vehicle?

A. No, sir. It was only the 30 day tag. It wasn't a registration or bill of sale stating that the vehicle belonged to the defendant. Nothing like that.

Q. So other than that particular document, the receipt, you didn't find any other indicia of ownership to that particular vehicle?

A. No, sir.

Q. What did you do at that point in time after you were not convinced or satisfied as to whom the vehicle belonged?

A. I notified my partner that -- my partner, Duane Petrovich, that I did not find anything significant as to the ownership of the vehicle, or something that reflected the defendant was the owner of the vehicle. It was during this time that a tow sheet had been started up.

Q. By whom?

A. By Detective Petrovich.

Q. What is a tow sheet?

A. A tow sheet is a documentation that the Cleveland police uses for our tow unit. It has on it the

VIN number of the vehicle, date and time of a request for tow and various other lines that would indicate ownership or who was driving the vehicle at the time of the tow.

Q. Is any other document filled out in conjunction with the tow sheet?

A. In this case, whereas the vehicle was being towed because of fictitious plates, there would also have been -- there also exists a section of the tow sheet where you would write down the ticket number and the violation number, along with the muny (sic) code number.

Q. Now when a vehicle is towed in such a circumstance, is there any accounting done of the contents of the vehicle?

A. In all circumstances of a tow, an itemized list of the property within the vehicle has to be documented for not only the safety -- or not only the safety of the police officers, but to secure any property that could possibly have been in the vehicle of the owner or the driver of the vehicle.

- Q. Is there a particular name for this itemized list?
- A. It (sic) a property inventory list.
- Q. Who at the scene was responsible for compiling the property inventory?
- A. The property inventory was done at this time by myself and Detective McCauley.
- Q. Detective Walker, handing you State's Motion Exhibit 1 for identification purposes, would you take a look at that and tell me whether or not you recognize the document?
- A. Yes, I do recognize it.
- Q. What is that document?
- A. That is a Cleveland Police Department Vehicle Tow Authorization Sheet, or duplication of such.
- Q. Is that the tow sheet relating to the vehicle that you stopped that particular day?
- A. Yes, sir.
- Q. Now did you fill out any part of that document?
- A. No, I did not.
- Q. Do you recognize any of the officers' handwriting from your particular unit on that document?
- A. Yes.

- Q. Whose handwriting do you recognize?
- A. I recognize Detective McCauley's handwriting, and also Detective Petrovich's handwriting.
- Q. Now after Detective Petrovich had started the tow sheet, what did you do at that point in time?
- A. I remember speaking with the defendant one time before I walked back to the vehicle, and he stated there was some sort of documentation in the vehicle that would prove who the vehicle belonged to. I asked him again, can I look in the vehicle? And he said yes.
- * * *
- Q. Where else did you look further in the vehicle?
- A. Well, I looked into the glove box again to see if I overlooked anything, and I looked in various door[s] -- within the doors and the seats and things like that, all in the front part of the vehicle. I did not notice anything that would pertain to ownership of the vehicle.

Q. Now at this point in time, were either Detective Petrovich or Detective McCauley involved in inventorying the vehicle?

A. Yes. Detective McCauley was assisting me with -- well, she was assisting Detective Petrovich with an inventory of the vehicle while I was still looking for some sort of documentation to prove ownership.

Q. Now during Detective McCauley's inventorying the vehicle, did she find anything, to your knowledge?

A. Yes, sir.

Q. What did she find, to your knowledge?

A. Detective McCauley came upon a loaded .380 automatic. It was underneath the rear right floor mat of the vehicle.

Q. After she located that weapon, what happened with the three occupants, if anything?

A. It was at this time that all the occupants were placed under arrest and advised of their rights.

* * *

Q. Now subsequent to her finding that weapon, did you

look any further in the vehicle for evidence of ownership?

A. Yes, sir.

Q. Where did you look?

A. I looked further. I looked -- gave a more intense search to the front part of the vehicle, and when it was determined there was no -- when I determined, myself, there was nothing else that I could search for, nothing else that I could find that I hadn't already discovered, and this tow sheet had been started up and we are going to tow the vehicle because of the gun, I decided I should assist Detective McCauley with a more thorough inventory of the vehicle.

Q. Now you said because you were going to tow the car because of the gun. I thought you were going to tow the car regardless of the gun?

A. Well, yes. Excuse me. We do -- we were going to tow the car because of the fictitious plates and we were more emphasized on towing the car because we found the gun. We placed the three occupants under arrest

because of the gun.
Q. At that point in time after the gun was located, they were not free to leave?

A. No, sir.

* * *

BY MR. SHELDON:

Q. They had been placed under arrest at that point?

A. Yes, sir.

Q. Did you personally find anything of evidentiary value upon searching further in the vehicle?

A. Yes, sir.

Q. What did you find?

A. I went into the trunk of the vehicle and it was discovered by myself at that time, a black hip pouch.

Q. How were you able to get inside the trunk?

A. I used the keys from the key ring, from the vehicle.

Q. Can you describe what the black pouch looked like?

A. It was a black hip pouch. They are commonly used to carry items that are a little larger for your wallet and you just don't want to have in your hand. It's a convenience. It's like a

purse.

Q. How does it fasten to the hip area?

A. I'm unaware of that.

Q. Did this particular pouch have a zipper or any type of lock?

A. Yes. It had a zipper on it.

Q. Where was the hip pouch situated in the trunk area?

A. It was on the left side of the trunk in plain view.

Q. Was the pouch opened or closed when you observed it in the trunk?

A. It was open, sir.

Q. Did you see anything inside the pouch, in the open pouch, when you looked at it?

A. Yes.

Q. What did you see?

A. I saw a plastic bag.

Q. Did you see anything inside the plastic bag?

A. Yes, upon further examination of it, yes, I did.

Q. What did you see?

A. I pulled the plastic bag out and I discovered it to be a bag of -- filled with suspected crack cocaine, and there was other bags of similar standard in there, and each bag I pulled out, each bag contained further contraband.

Some bags had suspected crack cocaine and other bags had suspected powder cocaine.

Q. Detective Walker, handing you what's been marked for identification purposes as State's Motion Exhibit 3, of which the contents have been removed, can you take a look at that exhibit and tell me whether or not you recognize it?

A. Yes, I do recognize it.

Q. What is that?

A. This is the hip pouch that was in the trunk of the suspect vehicle.

Q. Is there anything different about the hip pouch, as it sits there today, as when you recovered it on this date, on September 1st?

A. It -- yes, there is something different about it.

Q. What's different about it?

A. Well, it doesn't contain the suspected narcotics. Also, it has on it now a badge number of the officer who placed it into our property room.

Q. Is the property envelope there that it was placed into?

A. Yes.

* * *

Q. Now, is the -- as the hip pouch sits there today, was it open as it is now?

A. Yes.

Q. Was the bag protruding at all from it?

A. Yes, the bags were protruding from this area right in the larger compartment.

THE COURT: I wonder if we could make some estimates about this. I would say this bag seems to be maybe 10 inches long across the top, and maybe seven inches high, with two zipper compartments, and there is a large zipper compartment. Then on the outside of the bag there is a separate smaller zipper compartment?

THE WITNESS: Yes, sir.

THE COURT: Where is it that you saw the bags protruding out?

THE WITNESS: The bags were protruding from the larger compartment.

* * *

Q. Detective Walker, upon examining further the plastic baggies, what did you do, if anything, at that point in time?

- A. I notified Detective McCauley, initially, of my discovery, and then I notified the other members of the Street Crimes Unit of my discovery.
- Q. Based on your training and experience, what did you suspect the plastic baggie to contain?
- A. I suspected several of the bags to contain suspected crack cocaine, and the other bags to contain suspected powder cocaine.
- Q. How many bags, in total, do you recall confiscating?
- A. I don't recall how many total bags there were.
- Q. But all the baggies that you recovered were located inside the leather hip pouch?
- A. Yes. Inside the larger compartment of the hip pouch.
- Q. Now you mentioned earlier that Detective McCauley had located a weapon in the vehicle?
- A. Correct.
- Q. How were you alerted to this fact?
- A. She told me.
- Q. Do you recall what she stated to you when she found the

- weapon?
- A. She said I found the gun. There is a loaded gun here.
- Q. Just so I'm clear, this gun was found after the males had been ordered out of the car and patted down; correct?
- A. That's correct.
- * * *
- Q. Did you, other than finding the suspected cocaine in the trunk, did you locate any other evidence or contraband in the vehicle?
- A. There was no more evidence pertaining to the case or contraband pertaining to the case. There was (sic) personal items in the vehicle that are listed on the inventory sheet.
- Q. Did you find any other documentation or indicia of ownership in the trunk area?
- A. No, sir.
- Q. Did you remain at the scene until a tow truck arrived?
- A. The vehicle was driven by Detective -- a detective within the Street Crimes Unit, back to the Justice Center where there was a more thorough inventory, and the tow truck was able to pick it up from

- there.
- Q. Why was this vehicle driven back to the Justice Center?
- A. Well, a more thorough inventory of the vehicle could be done.
- Q. Now did the officers from your unit, the Street Crimes Unit, participate in the more thorough inventory?
- A. Yes, sir.
- Q. Do you know if anything, in addition to what was found at the scene, was recovered upon doing a more thorough inventory?
- A. I don't recall anything additional being found.
- Q. Now, normally if you requested a tow truck to tow a vehicle, wouldn't you wait for the tow truck to arrive and tow the vehicle?
- A. Normally, yes, sir.
- Q. Why wasn't that done in this case?
- A. Well, given the suspected heightness of the stuff with a loaded weapon and the substantial amount of suspected narcotics, we felt that it would be best we take the vehicle back to the Justice Center where it could be more secured for the

- protection of the defendant, as well as of the officers.
- Q. Now at any time during the stop of this vehicle did the defendant, Thomas Pierce, give you a name of anybody that may be owner of that vehicle?
- A. Yes, he did.
- Q. Do you recall the name he gave you?
- A. As I look[ed] at the tow sheet, he gave a name of Franksheria, I believe her first name was. Cannon is her last name.

THE COURT: What was the last name?

THE WITNESS: Cannon.

* * *

- Q. At any point in time during this vehicle stop, during the inventory and search of the vehicle, did any of the three defendants make any statements regarding ownership of the contraband that was found in the vehicle?
- A. Yes, sir.
- Q. Which defendant made the statement?
- A. That would be Thomas Pierce.

- Q. To whom did he make the statement?
- A. He made the statement to myself.
- Q. When did he make this statement at the scene?
- A. Following his rights being read to him.
- Q. What did he state to you regarding the evidence that was found in the car?
- A. He stated to me that the suspected narcotics and the weapon that was found in the vehicle was his, and that the other two occupants of the vehicle had absolutely nothing to do with it.

(Suppression Hearing Transcript, pp. 137-154.)

Once the decision was made to tow the vehicle, an inventory search was conducted. Detective Roman, another member of the Street Crimes Unit, testified that an inventory search serves three purposes: (1) to protect the police against charges of theft; (2) to protect an individual's personal property; and (3) to aid law enforcement. During the inventory search, the unit discovered a loaded .380 caliber handgun under a rear floor mat and an unzipped pouch containing 111.11 grams of powder which later proved to be crack cocaine in the trunk. Upon discovery of the weapon, all three co-defendants (Pierce, Durden and Flowers) were placed under arrest and advised of their rights.

Pierce (a.k.a. Hale) was also given a ticket at the scene for fictitious plates in violation of Cleveland Municipal Ordinance 435.09(F):

(F) No person shall park or operate any vehicle upon any public street or highway upon which are displayed any license plates not legally registered and issued for such vehicle, or upon which are displayed any license plates that were issued on an application for registration that contains any false statement by the applicant. (Ord. No. 2822-89. Passed 3-19-90. eff. 3-22-90.)

The hearing concluded on January 11, 1994. On January 27, 1994, the trial court granted petitioner's Motion to Suppress illegally obtained evidence. The trial court's ruling incorporated the Findings of Fact and Conclusions of Law made on the record at the conclusion of the suppression hearing.

The trial court found that the traffic violation, fictitious plates, was used as a justification for stopping and searching petitioner and the vehicle for the presence of illegal drugs. The trial court stated:

The evidence that the police possessed at the time of the search was inadequate to resolve whether the Cutlass was improperly licensed. * * * At the same time, the police had information which could have led them to calling either the dealer that sold the car to Ms. Cannon or Ms. Cannon herself. Those calls could have confirmed that the license which was on the Cutlass had been properly placed there in good faith effort to

conform with R.C. 4503.12(C).

The trial court ruled that the State failed to demonstrate by a preponderance of the evidence that, at the time of the stop, the vehicle was improperly displaying a fictitious license plate or that the police had made a good faith effort to determine the validity of the tag on the vehicle.

REASONS FOR DENYING THE WRIT

I. THE TRIAL COURT ERRED WHEN IT SOUGHT TO IMPOSE AN ADDITIONAL DUTY UPON THE POLICE AS AN ALTERNATIVE TO AN IMPOUND SEARCH RATHER THAN DETERMINING WHETHER THE POLICE HAD PROBABLE CAUSE TO SEIZE AND CONDUCT AN INVENTORY SEARCH OF THE VEHICLE.

II. AN APPELLATE COURT HAS THE AUTHORITY TO REJECT ERRONEOUS TRIAL COURT'S FINDINGS WHICH ARE CONTRARY TO LAW, COLORADO V. BERTINE (1987), 479 U.S. 367, SINCE THE TRIAL COURT SOUGHT TO CREATE ALTERNATIVES TO AN INVENTORY SEARCH OF AN IMPOUNDED VEHICLE.

Petitioner's argument that the trial court's disregard of Colorado v. Bertine (1987), 479 U.S. 367, to the extent that less intrusive measures might be available to achieve an inventory search, is somehow justified. This Court rejected that argument in Bertine and should reject the argument made in this case.

The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution, require the police to obtain a warrant based upon probable cause before they conduct a search. However, the warrant requirement is subject to a number of well-established exceptions. Coolidge v. New Hampshire (1971), 403 U.S. 443, 91 S. Ct. 2022.

An inventory search of an impounded vehicle is a well-defined exception to the warrant requirement. Colorado v. Bertine, *supra*. Accordingly, an inventory search of a lawfully impounded vehicle is valid under the Fourth Amendment when it is performed in good faith, pursuant to standardized police procedure or established routine, and when the evidence does not demonstrate the procedure involved is merely a pretext for an evidentiary search of the impounded vehicle. South Dakota v. Opperman (1976), 428 U.S. 364, 96 S. Ct. 3092; State v. Hathman (1992), 65 Ohio St. 3d 403.

Inventory searches serve to protect the owner's property while it is in police custody; protect police against claims concerning lost or stolen property; and protect police and the public against potential hazards posed by the impounded property. South Dakota v. Opperman, *supra*, at 369. An inventory search "must not be a ruse for a general rummaging in order to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory." Florida v. Wells (1990), 495 U.S. 1, 110 S. Ct. 1632.

Ohio courts have held that if the initial traffic stop was merely a pretext to search for drugs and there was no specific and articulable reason to stop the vehicle to search for drugs, the stop on a pretext of a traffic violation is not permitted; such a stop is a general and unreasonable search that is constitutionally prohibited by both the federal and state constitutions. The test for a pretextual search is whether the police officer, under the same circumstances but without the suspicion, would have made the stop. State v. Spencer (1991), 75 Ohio App. 3d 581, 585. Here the police had a specific and articulable reason to stop the vehicle, an Oldsmobile that had license plates assigned to a Chevrolet.

In a suppression hearing, the State bears the burden of proof and must demonstrate the warrantless search and seizure were reasonable. State v. Bevan (1992), 80 Ohio App. 3d 126. In justifying a particular intrusion, a police officer must be able to point to specific and articulable facts which, taken together with reasonable inferences from those facts, reasonably warrant the officer's belief that criminal activity has occurred or is imminent. Terry v. Ohio (1968), 392 U.S. 1.

In the present case, the Street Crimes Unit followed petitioner's vehicle because of its improper license plates and its suspicion that the occupants may be engaged in illegal drug activity. Petitioner's vehicle was stopped only after the police determined that the license plates were registered to a vehicle other than the Oldsmobile. And even if it were later learned that Municipal Code 435.04(F) (the city ordinance under which petitioner was ticketed) became temporarily suspended under some other ordinance, that fact would not vitiate the legality of the stop. The officers clearly had probable cause to stop the vehicle. Operating a motor vehicle with fictitious license plates is a serious infraction that warranted the stop, particularly in this era of escalating auto thefts.

In addition, after the initial stop was made, the police determined that the driver, petitioner, who was not the owner and an admitted fugitive with a fake driver's license, was unable to produce vehicle registration, certificate of title or any other proof of ownership. Nor did a check by police on the vehicle identification number produce any proof of vehicle ownership. Only after all this had occurred did the Street Crimes Unit decide to tow the vehicle and perform an inventory search of the vehicle's contents in accordance with departmental policy.

In the case sub judice, the record demonstrates that the Street Crimes Unit clearly had probable cause to stop petitioner's vehicle. In addition, the fact that petitioner was unable to provide them sufficient proof of ownership for the vehicle justified the police officer's subsequent decision to tow the vehicle and conduct an inventory search of its contents.

Petitioner maintains that the glove compartment contained a letter from the Ohio Bureau of Motor Vehicles and a copy of the Bill of Sale for the automobile. The trial court ruled that these documents were present in the glove compartment at the time of the stop based on statements made by petitioner and Fransheria Cannon even though neither testified that they saw the Bill of Sale or letter in the car on September 1, 1993, the day of the stop.

The State bears the burden of proof and must demonstrate the warrantless search and seizure were reasonable.

In its findings, the trial court concluded that the State failed to show by a preponderance of the evidence either:

(1) that the vehicle was improperly displaying a particular license. In light of the testimony of Detective Petrovich that he learned through police channels that the Cutlass bore a license assigned to a Chevrolet (and operated by one with a fictitious

driver's license and who was not the owner) and carrying a passenger reputed to be involved with drug trafficking; and admittedly in a high crime area, comprised sufficient justification to warrant a stop. Indeed, in its statement, the lower court conceded that, "Before stopping the Cutlass, they (police) learned through the police department computer that the plates on the Cutlass were not registered to that vehicle." Or

(2) "that they (police) had made a good-faith effort to determine the validity of the tag* * *and after making such good-faith effort, had reasonable cause to believe that the vehicle was improperly licensed* * *."

The police found no evidence of car ownership. When the driver was asked by the (ticketing) officer for identification, petitioner produced the Ohio driver's license in the name of Robert Hale, which petitioner admitted was a fake permit used by petitioner to evade apprehension and extradition resulting from his then status as a fugitive. Petitioner had over \$900 in his possession and a pager (to receive calls). Petitioner claimed that there was evidence of ownership in the glove compartment without disclosing what that evidence was. Both Detectives Petrovich and Walker, singly and separately, searched the glove box and found "some kind of duplication of an application of receipt for a 30-day tag of the State of Ohio." Finding no satisfactory evidence of car ownership or identity of driver, Petrovich followed police procedure by impounding the car to inventory it.

In its decision, the lower court wrote, "the police had information which could have led them to calling either the dealer

that sold the car, or Mrs. Cannon¹ herself. These calls could have confirmed that the license which was on the Cutlass had been properly placed there in a good-faith effort to conform to the law. All of this could have been by radio contacts while the police were at the scene and before the Cutlass was impounded and searched." (Footnote added).

Thus, the court sought to impose a duty upon the police as an alternate to impoundment, an issue given attention by the Supreme Court in Colorado v. Bertine, supra. The court rejected the idea that the Fourth Amendment mandates the police to prove alternates to impoundment to a vehicle owner. (Emphasis added.) The court explained that "reasonable police regulations relating to inventory procedures administered in good-faith satisfies the Fourth Amendment, even though courts might, as a matter of hindsight, be able to devise equally reasonable rules requiring a different procedure." Id. at 747. The court reasoned, that while offering the owner or operator, an alternate was entirely possible, it was not required by the Constitution; and in fact, that approach may not address the legitimate interests of protecting the police, the property or the community.

In short, the trial court was applying erroneously its own standard of review, as opposed to determining whether the detectives had probable cause to seize and inventory the vehicle. (Emphasis added.) "In dealing with probable cause* * *we deal

¹ She admitted that had the police informed her that a male (possessing a driver's license of Robert Hale) indicated that she gave him permission to use the car, she would have responded that she did not give such permission and that she did not know anyone by that name.

with probabilities. These are not technical, they are the factual and practical consideration of everyday life on which reasonable and prudent men, not legal technicians act." Brinegar v. United States (1949), 338 U.S. 160; Carroll v. United States (1925), 267 U.S. 132, 164. In issuing its conclusions of law and fact, the trial court imposed its own procedure over that of the officers. To the extent that the court relied on its alternatives to impoundment, its findings are not warranted. (Emphasis added.)

As the court stated in Illinois v. Gates (1983), 462 U.S. 229, 230, 231: "The evidence thus collected must be seen and weighed not in terms of arbitrary analysis by scholars, but as understood by those versed in the field of law enforcement."

From this array of evidence, the search and seizure was reasonable.

To conclude:

1. On September 1, 1993, a Cutlass Oldsmobile, operated by Thomas Pierce, was traveling south on East 71st (toward Superior), a high crime area.

2. The Oldsmobile carried a driver and two passengers: Nathaniel Flowers (in the front passenger seat, hence easily seen) and Napoleon Durden (in the rear seat).

3. Nathaniel Flowers was recognized by Detective Walker (who grew up with Flowers), of the Street Crimes Unit, whose major intent is to enforce the State's drug laws. Flowers was reputed to be involved in drug transactions.

4. The officer followed the Oldsmobile and, en route, learned through the Police Department computer that the plates on the Cutlass were registered, not to the 1987 Cutlass, but to a 1985 Chevrolet, thus raising the possibility of a stolen vehicle.

5. The driver of the car identified himself as Thomas Pierce (whose occupation was not revealed), who possessed over

\$900 in cash and a pager (to receive messages).

6. When an officer approached Pierce for identification, he produced an Ohio driver's license issued to Robert Hale and informed the unit that he had won a Motion to Quash Evidence -- before.

7. After the officer issued a ticket to Robert Hale for improper plates, Pierce disclosed that the Hale license was fictitious and used by Pierce to evade his apprehension and extradition as a current fugitive from Pennsylvania.

8. In lieu of Pierce's explanation of the Hale license, Pierce was operating a vehicle in Ohio without a valid Ohio driver's license.

9. When officers asked Pierce about the tags on the Oldsmobile, he told them that he had pagers in the glove compartment that would straighten out the whole matter.

10. Detective Petrovich then looked in the glove box and then reported, "the only thing I did see in the glove box was paperwork from a 30 day tag * * *," which held no relevance because there was not a 30 day tag on the car.

11. The officers ran the VIN of the Oldsmobile but it came back NIF (not in file).

12. Detective Walker separately and alone searched the glove box and reported that he found a receipt of some sort for a 30 day tag and a few cassette tapes but no evidence of ownership.

13. After Detective Petrovich and Detective Walker checked the glove box and reported that: (a) there was nothing there to establish ownership² or (b) registration of the vehicle, (c) nor did they know Fransheria was really Pierce's girlfriend or that

² Fransheria testified that her vehicle -- as impounded -- still contained her indicia of ownership; however, the authorities refused to release the car to her without satisfactory evidence of ownership.

(d) she gave Pierce permission to use her car, and (e) since the plates did not come back on the car, an inventory was instituted. The inventors followed proper procedure, which was necessary to protect the police, the property and the community.

Considering all these factors that became part and parcel of the totality of the circumstances, the State successfully bore the burden of proof by demonstrating that the warrantless search and seizure were reasonable. State v. Bevan, supra.

In the aftermath of the inventory, a loaded gun was found in the vehicle, as well as crack cocaine and cocaine powder discovered in the trunk of the car; all of which were claimed by petitioner.

CONCLUSION

Respondent submits that the petition herein fails to present any question of constitutional dimension justifying review by this Court.

The Petition for Writ of Certiorari must be denied.

Respectfully submitted,

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